



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
February 21, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7641 3671

Mr. Peter Dornau
Star Brite Distributing, Inc.
4041 S.W. 47th Avenue
Ft. Lauderdale, Florida 33314

Consent Agreement and Final Order in the Matter of
Star Brite Distributing, Inc. Docket No. FIFRA-05-2013-0003

Dear Mr. Dornau:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on February 21, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,200 is to be paid in the manner described in paragraphs 31 and 32. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 25, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. FIFRA-05-2013-0003
)
Star Brite Distributing, Inc.) Proceeding to Assess a Civil Penalty
Davie, Florida,) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
Respondent.) Act, 7 U.S.C. § 136l(a)
_____)

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Star Brite Distributing, Inc., a corporation doing business in the State of Florida.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this

CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been cancelled.

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A “person” means any individual, partnership, association, corporation, or any organized group or persons whether incorporated or not. 7 U.S.C. § 136(s).

15. A “registrant” is a person who has registered any pesticide pursuant to the provisions of FIFRA. 7 U.S.C. § 136(y).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

17. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 through January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

20. Respondent is the registrant of “Compound-X,” EPA Registration Number 51946-1.

21. The registration of “Compound-X,” EPA Registration Number 51946-1, under Section 3 of FIFRA, was cancelled on July 21, 2005, pursuant to 70 Fed. Reg. 44637 (August 3, 2005), for the non-payment of registration maintenance fees for the year 2005.

22. Kinpak, Inc. is a subsidiary of Respondent, with a place of business at 2780 Gunter Park Drive, East, Montgomery, Alabama 36109.

23. On January 22, 2010, an inspector employed by Michigan Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Shrader Packaging Company, Inc., located at 2117 North Marie, Westland, Michigan 48185 (Shrader).

24. During the January 22, 2010 inspection, the inspector collected an authorization agreement between Shrader and Respondent and a shipping record of “Compound-X,” EPA Registration Number 51946-1.

25. The authorization agreement collected during the January 22, 2010 inspection authorized Shrader to “process and package [the] EPA registered product “Compound-X” and return it to [Respondent’s] warehouse when completed.”

26. The shipping record collected during the January 22, 2010 inspection documented the shipment of 20 cases of “Compound-X” to Kinpak, Inc. on February 19, 2008.

27. On or about February 19, 2008, Respondent distributed or sold the pesticide “Compound-X,” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), from Shrader Packaging in Westland, Michigan, to Respondent’s subsidiary, Kinpak, Inc. of Montgomery, Alabama.

28. Respondent’s subsidiary, Kinpack, Inc. received “Compound-X” on or about February 19, 2008.

29. Respondent’s distribution or sale of the unregistered pesticide “Compound-X” constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

30. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$5,200. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,200 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Star Brite Distributing, Inc." and the docket number of this CAFO.

32. A transmittal letter stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Puja Lakhani (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay timely the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

37. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

39. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

40. The terms of this CAFO bind Respondent, its successors and assigns.

41. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


42. Each party agrees to bear its own costs and attorneys fees, in this action.

43. This CAFO constitutes the entire agreement between the parties.

Star Brite Distributing, Inc., Respondent

1/30/13

Date




Peter Dornau
President
Star Brite Distributing, Inc.

United States Environmental Protection Agency, Complainant

2/14/2013

Date



Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Star Brite Distributing, Inc.
Docket No. FIFRA-05-2013-0003**

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-20-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Star Brite Distributing, Inc., was filed on February 21, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7641 3671, a copy of the original to the Respondent:

Mr. Peter Dornau
Star Brite Distributing, Inc.
4041 S.W. 47th Avenue
Ft. Lauderdale, Florida 33314

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Puja Lakhani, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0003